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In the United States Patent and Trademark Office

Serial Number: 10/564,802
Application Filed: April 2, 2007
Applicant: Deutsch et al
Application Title: SPORTS TRAINING AND TESTING METHODS, APPARATUS AND
SYSTEM
Examiner/GAU: Egloff, Peter Richard / GAU 3715

Dated August 31, 2010
At Coopers Plains, Qld, Australia

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Dear Sir:

In response to the Office Action mailed June 7, 2010, please consider the following:

REMARKS/ARGUMENTS

1. The Applicant has carefully considered the official communication dated June 7, 2010 and the following remarks and arguments are made in response to that communication.
2. In paragraph 2 of the detailed action, the Examiner has rejected claims 1 to 3, 9 to 12, 14 and 15 under 35 U.S.C. 102(b) as being anticipated by Williams.
3. In support of this, the Examiner has stated that "Williams discloses a method for sports training and testing of at least one athlete, said method comprising the steps of: initiating within a control unit (58) a predetermined protocol for training and testing ..."
4. The Examiner's attention is respectfully drawn to MPEP 2121, referring to *Impax Labs. Inc. v. Aventis Pharm. Inc.*, 468 F.3d 1366, 1383, 81 USPQ2d 1001, 1013 in which it was held that prior art reference provides an enabling disclosure and thus anticipates a claimed invention if the reference describes the claimed invention in sufficient detail to enable a person of ordinary skill in the art to

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carry out the claimed invention. As set out in *In re Wands*, 858 F.2d at 737, 8 USPQ2d at 1404 (Fed Cir 1988), the test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation.

5. Applicant respectfully submits that Williams does not "enable" the initiation of a predetermined protocol for training and testing as stated by the Examiner.

6. According to general English usage, a "protocol" has a number of meanings. However, being guided by the description, it is submitted that "protocol" includes "one or more pre-programmed or user defined stimuli activation patterns for a series of physical activities in a training regime" (para 0046 of the description). This is in line with the more general meaning of a number of rules or guidelines for a specific activity. That paragraph in the description continues as follows: "Each protocol suitably includes information about location of the remote terminals, the sequencing of the series of stimuli and the required action or response."

7. In Williams, reference is made to a Control Unit 58 possibly "comprised of a hand held computer and radio transmitter which would be operable for controlling the light batteries when the athlete breaks the light beams...". Thus Williams envisages control of the various light batteries and the optical switches with the control unit.

8. Applicant submits that such operation of the control unit would not extend to initiating any "predetermined protocol". This is supported by the use of the word "predetermined" which implies that the present invention allows what could be regarded as programming of a control unit with certain protocols.

9. Examples of such initiation of predetermined protocols are described in the various examples provided in the present description. It is submitted that such predetermined protocols cannot be achieved with the apparatus described in Williams without "undue experimentation".

10. When the claims of the present application are considered in light of the description, it is submitted that the technical requirements required for initiating a predetermined protocol are not available in the Williams disclosure, given the meaning of "protocol" described above.

11. The Examiner has set out further: "...which protocol comprises layout information for locations of a plurality of remote units (light batteries)..."

12. It is submitted that "layout information" is to be understood as information relating to the location of the plurality of the remote units. While the control unit of Williams is described as controlling the light batteries, there is no disclosure of the control unit comprising layout information relating to the light batteries. In fact, as set out in lines 31 to 33, column 4, Williams describes how

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"the toggle switches would enable the coach or trainer to pre-select a path" rather than the path being initiated in the control unit.

13. The Examiner has set out further that Williams discloses "automatically modifying further stimuli of the series of stimuli having regard to the route or game plan information and the response (column 4, line 45 – column 5, line 3)".

14. Column 4, line 45 merely describes the nature of Figure 2. Line 45 to column 5, line 3 is a description of one of the embodiments of the invention of Williams. While that passage describes what appears to be the automatic operation of certain components, it cannot be considered as automatic modification having regard to the route or game plan information. The reason for this is that the control unit of Williams is not described as having any route or game plan information. Thus, automatic modification would not be possible.

15. In view of the above paragraphs, it is respectfully submitted that claims 1 to 3, 9 to 12, 14 and 15 define patentable subject matter.

16. In paragraph 5 of the Detailed Action, the Examiner has rejected claims 4 to 8, 13 and 16 to 33 under 35 U.S.C. 103(a) as being unpatentable over Williams in view of French et al.

17. Claims 4 to 8 are dependent on claim 1. Claims 13 and 16 are dependent on claim 10. Claims 16 to 31 are dependent on claim 10. As submitted above, claims 1 and 10 define patentable subject matter. It follows that claims 4 to 8, 13 and 16 to 30 define patentable subject matter.

18. As far as claims 32 and 33 are concerned, the Examiner has relied on the contention that Williams describes a method that includes the step of "initiating within a control unit a predetermined protocol". As set out above, it is submitted that Williams does not describe such a step.

19. The Examiner has also relied on the contention that Williams describes the step of "automatically modifying further stimuli of the series of stimuli having regard to the feedback information". As set out above, it is submitted that Williams does not describe such a step.

20. Thus, it is respectfully submitted that Williams is not relevant for a rejection of claims 4 to 8, 13 and 16 to 33 based on 35 U.S.C. 103(a).

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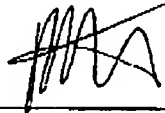
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Conclusion:

It is respectfully submitted that all of the Examiner's objections have been successfully traversed. Accordingly, it is submitted that the application is now in condition for allowance. Reconsideration and allowance of the application are courteously solicited.

Very respectfully,

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